

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

THE CINCINNATI INSURANCE
COMPANY, an Ohio insurance
corporation

Case No.
Hon.

Plaintiff,

v.

STERIMED MEDICAL WASTE
SOLUTIONS, INC. , a Delaware
corporation

Defendant.

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Omar J. Harb (P51306)
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COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Plaintiff, The Cincinnati Insurance Company, by and through
its attorneys, Alber Frank, PC, and for its Complaint for Declaratory Judgment,
states as follows:

PARTIES AND JURISDICTION

1. Plaintiff, The Cincinnati Insurance Company (“CIC”), is a corporation organized and existing under the laws of the state of Ohio, with its principal office located in Cincinnati, Ohio.

2. Defendant, SteriMed Medical Waste Solutions, Inc. (“SteriMed”) is a corporation organized and existing under the laws of the state of Delaware, with its principal office located at 23065 Commerce Drive, Farmington Hills, Michigan 48335.

3. This action is between citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

4. This Court has subject matter jurisdiction pursuant to 28 USC §1332. Venue in this Court is appropriate to 28 USC §1391.

BACKGROUND

5. SteriMed obtained certain insurance coverage from CIC with the coverage period commencing on August 15, 2015, as set forth on the Common Policy Declarations for Policy No. ENP 034 47 24 attached as part of Exhibit A.

6. Among the coverages purchased by SteriMed from CIC was Crime and Fidelity Coverage, as set forth in the Crime and Fidelity Coverage Part Declarations, attached as part of Exhibit A.

7. Pursuant to the Crime and Fidelity Coverage Part Declarations, the only insuring agreements forming part of such coverage relates to “Employee Theft” and “Forgery or Alteration.” (See Exhibit A)

8. The Employee Theft coverage provided by CIC to SteriMed is contained in Coverage Form CR0020 05/06, as set forth on the Crime and Fidelity Coverage Part Declarations, at Exhibit A.

9. The Commercial Crime Coverage Form (Discovery Form) sets forth the various conditions for coverage, exclusions, definitions and other provisions forming the basis of employee theft coverage provided by CIC to SteriMed. (A copy of the Commercial Crime Coverage Form (Discovery Form), hereinafter referred to as the “Policy”, is attached hereto as Exhibit B).

10. Coverage under the Policy “applies to loss that you sustained resulting directly from an “occurrence” taking place at any time which is “discovered” by you during the Policy Period shown in the Declarations...” (See Exhibit B at sec. A, p. 1),

11. With respect to “Employee Theft”, the Policy provides: “we will pay for loss of or damage to ‘money’, ‘securities’ and ‘other property’ resulting directly from ‘theft’ committed by an ‘employee’, whether identified or not, acting alone or in collusion with other persons.” (See Exhibit B at sec. A.1., p.1).

12. Under the “Exclusions”, the Policy provides that the Employee Theft coverage does not cover:

a. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is depended upon:

(1) An inventory computation;

(See Exhibit B at sec. D.2.a., p. 3)

13. Under the “Conditions” section, the Policy provides that: “this insurance covers loss that you sustained resulting directly from an ‘occurrence’ taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.” (See Exhibit B at sec. E.1.p., “Territory,” p. 8).

14. SteriMed has made a claim on CIC’s Policy, alleging that employee theft occurred with respect to seven pieces of equipment known as “S70”, including three new S70s and four used S70s.

15. SteriMed provided its most recent Proof of Loss with respect to the alleged theft of the S70s on October 7, 2016 (the “Proof of Loss”), a copy of which is attached hereto as Exhibit C.

16. SteriMed alleges a loss of \$470,000.00 in the Proof of Loss.

COUNT I – DECLARATORY JUDGMENT

17. Plaintiff incorporates Paragraphs 1 through 16 above as though fully stated herein.

18. CIC has reviewed the Proof of Loss, conducted interviews with SteriMed employees, and reviewed all documentation submitted by SteriMed in support of its Proof of Loss.

19. The Proof of Loss submitted by SteriMed is deficient, as it does not contain a date of discovery with respect to the alleged loss. (See Exhibit C).

20. The Policy contains a requirement that SteriMed provide a “detailed, sworn Proof of Loss within 120 days.” (See Exhibit B at sec. E.1.e.(4), p. 5).

21. Without a fully completed Proof of Loss containing the date of discovery, CIC has no liability to SteriMed under the Policy, which requires that the discovery occur during the Policy Period.

22. In addition to the failure to provide a fully completed Proof of Loss, CIC’s investigation of the materials submitted by SteriMed, as well as the interview of SteriMed employees, reveals that SteriMed has not provided evidence necessary to establish that coverage exists, in the following ways:

- a. SteriMed has provided no evidence to CIC to establish that its loss was sustained as a result of employee theft, as required by the Policy at Sec. A.1. (See Exhibit B).

- b. Based on documentation provided by SteriMed and interviews with SteriMed employees, SteriMed has not provided evidence to establish that discovery of the alleged loss occurred during the Policy Period as required by Sec. A of the Policy. (See Exhibit B).
- c. SteriMed has not provided evidence that the S70s were stolen.
- d. SteriMed has not provided evidence to establish the valuation of the S70s, as set forth in the Policy at Sec. E.1.r. (See Exhibit B at p. 8)
- e. SteriMed has not provided evidence that all of the S70s at issue were stolen from a location within the United States, Puerto Rico, or Canada, as required by the Policy at Sec. E.1.p. (See Exhibit B at p.8).
- f. SteriMed relies upon an inventory computation to prove the existence of the loss, which is excluded from coverage under the Policy pursuant to Sec. D.2.a.(1). (See Exhibit B at p. 3).

23. Because SteriMed has made a claim under the Policy issued by CIC, there is an “actual controversy” between Plaintiff and Defendant under the Declaratory Judgment Act, 28 USC §2201 *et. seq.*

24. This Court should enter a Judgment declaring that CIC has no liability under the Policy issued to SteriMed for the reasons set forth in this Complaint.

WHEREFORE, Plaintiff, The Cincinnati Insurance Company, respectfully requests that this Honorable Court enter a judgment declaring that Plaintiff has no obligation under the Commercial Crime Coverage Form contained within Policy No. ENP 034 47 24 naming Defendant, SteriMed Medical Waste Solutions, Inc. as

Insured. Plaintiff further requests that this Court award costs, expenses, attorney fees, and any other relief that it deems just and appropriate.

ALBER FRANK, PC

By: /s/Phillip G. Alber
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Dated: March 6, 2018

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